

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DEBORAH OLSEN,
 Plaintiff,

v.

ALEXANDER FISHER, et al.,
 Defendants.

3:12-cv-80-RCJ-WGC

ORDER

Currently before the Court is a motion to dismiss (#16) for failure to state a claim filed by Defendant Cruise America, Inc. For the following reasons, the Court denies the motion to dismiss (#16).

BACKGROUND

On September 6, 2010, Plaintiff Deborah Olsen's vehicle was struck by an RV driven by Alexander Fisher while stopped on West Williams Avenue in Fallon, Nevada. (Second Am. Compl. (#13) at 2). The RV was rented from Cruise America, Inc. by Yakov Nudel. (*Id.*). Cruise America had an auto insurance policy covering the RV with Empire Fire & Marine Insurance Company ("Empire"), which was underwritten by Zurich American Insurance Company ("Zurich"). (*Id.* at 3). Both Empire and Zurich denied coverage under the policy and refused to indemnify and defend Fisher and Nudel. (*Id.*). A default judgment was later entered by the Third Judicial District Court of the State of Nevada against Fisher and Nudel on August 9, 2011 in the amount of \$125,802.80. (Default Judgment (#13-1)).

Olsen then filed a complaint and later a first amended complaint in Nevada state court

1 against Fisher, Nudel, Cruise America, Empire, and Zurich.¹ (First Am. Compl. (#2-1) at 1).
2 The first amended complaint advanced a single cause of action for declaratory relief pursuant
3 to NRS § 30.010 et seq., seeking a declaration on the parties' respective rights and obligations
4 and for a judgment declaring that Empire and Zurich had a duty to defend and indemnify
5 Fisher and Nudel. (*Id.* at 3-4). This action was then removed to this Court on February 9,
6 2012. (Pet. for Removal (#2)).

7 Cruise America did not believe it was sufficiently implicated in the first amended
8 complaint and after consulting with Plaintiff the two parties entered into a stipulation in which
9 Plaintiff agreed to file a second amended complaint to rectify the perceived error. (Stipulation
10 (#11); Order (#12); Mot. to Dismiss (#16-1) at 2). Olsen filed a second amended complaint
11 on March 30, 2012 against Fisher, Nudel, Cruise America, Empire, and Zurich. (Second Am.
12 Compl. (#13) at 1). The second amended complaint again contains only a single cause of
13 action for declaratory relief pursuant to NRS § 30.010 et seq., requesting this Court to declare
14 the rights and obligations of the parties under the insurance policy and to declare that Empire
15 and Zurich have a duty to defend and indemnify Fisher and Nudel. (*Id.* at 3-4). The only
16 apparent changes made in the second amended complaint are additional allegations that
17 Cruise America had an obligation to insure the vehicle, that it breached this duty by failing to
18 adequately insure the vehicle, and that this breach resulted in damages to Plaintiff. (Second
19 Am. Compl. (#13) at 2-3).

20 Cruise America filed a motion to dismiss the second amended complaint for failure to
21 state a claim on April 13, 2012. (Mot. to Dismiss (#16)).

22 LEGAL STANDARD

23 The purpose of a Rule 12(b)(6) motion to dismiss for failure to state a claim is to test
24 the legal sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001).
25 “[T]he issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled
26 to offer evidence to support the claims.” *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 249 (9th
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28 ¹ The original complaint was not provided to this Court upon removal.

1 Cir. 1997) (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)).

2 To avoid a Rule 12(b)(6) dismissal, a complaint must plead “enough facts to state a
3 claim to relief that is plausible on its face.” *Clemens v. DaimlerChrysler Corp.*, 534 F.3d 1017,
4 1022 (9th Cir. 2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim
5 is plausible on its face “when the plaintiff pleads factual content that allows the court to draw
6 the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v.*
7 *Iqbal*, 556 U.S. 662, 678 (2009). Although detailed factual allegations are not required, the
8 factual allegations “must be enough to raise a right to relief above the speculative level.”
9 *Twombly*, 550 U.S. at 555. All well-pleaded factual allegations will be accepted as true and
10 all reasonable inferences that may be drawn from the allegations must be construed in the
11 light most favorable to the nonmoving party. *Broam v. Bogan*, 320 F.3d 1023, 1028 (9th Cir.
12 2003).

13 DISCUSSION

14 The only cause of action contained in the second amended complaint is a claim for
15 declaratory relief pursuant to NRS § 30.010 et seq. Cruise America contends that because
16 no relief is being sought against it under the single cause of action for declaratory relief,
17 Plaintiff has not stated a claim upon which relief may be granted. (Mot. to Dismiss (#16-1) at
18 4).

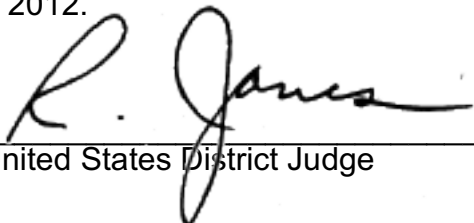
19 The Uniform Declaratory Judgments Act contained in NRS §§ 30.010 through 30.160
20 permits a court “to declare rights, status and other legal relations whether or not further relief
21 is or could be claimed.” NEV. REV. STAT. § 30.030. Pursuant to NRS § 30.130, “When
22 declaratory relief is sought, all persons shall be made parties who have or claim any interest
23 which would be affected by the declaration, and no declaration shall prejudice the rights of
24 persons not parties to the proceeding.” In her claim for declaratory relief, Plaintiff alleges that
25 a controversy exists between the parties regarding their rights and liabilities under the auto
26 insurance policy and requests that this Court declare their respective rights and obligations
27 under the policy. Cruise America is the holder of the policy and a party to the insurance
28 contract, and thus has an interest which may be affected by a declaration of this Court

1 regarding the rights and obligations of the parties under the contract. NRS § 30.130
2 accordingly requires that Cruise America be made a party to this action. Plaintiffs have
3 therefore properly stated a claim against Cruise America and Cruise America's motion to
4 dismiss is consequently denied.

5 **CONCLUSION**

6 For the foregoing reasons, IT IS ORDERED that Cruise America's motion to dismiss
7 (#16) is DENIED.

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9 DATED: This 3rd day of August, 2012.

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12 United States District Judge
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